

## NORTH SOMERSET COUNCIL DECISION



**DECISION OF:** COUNCILLOR STEVE BRIDGER. THE EXECUTIVE MEMBER FOR ASSETS AND CAPITAL DELIVERY

**WITH ADVICE FROM:** ASSISTANT DIRECTOR PLACEMAKING AND GROWTH AND S151 OFFICER

**Decision No:** 22/23 DP 436

**Subject: Deed of Variation to Large-Scale Voluntary Transfer (LSVT) contract with Alliance Homes**

**Key Decision: NO**

### **Reason:**

The recommendation relates to the implementation of a decision taken by Council in Sept 2019.

### **Background:**

This Decision Notice is pursuant to the report to Council approved on 24<sup>th</sup> Sept 2019 (minute COU 86, Affordable Housing Delivery Partnership Agreement with Alliance Homes: <https://n-somerset.moderngov.co.uk/Data/Council/201909241800/Agenda/23%20Affordable%20Housing%20Delivery%20Partnership%20Agreement%20with%20Alliance%20Homes.pdf>), specifically recommendations 3 and 4, which approved the following:

- (3) That officers be authorised to amend the LSVT Contract in accordance with the report to:
  - a) allow Alliance Homes to retain all the receipts from the sale of land and/or buildings transferred to Alliance Homes by the Council under the terms of the LSVT Contract, subject to the receipts, after the deduction of any direct sale costs incurred by Alliance, being spent on providing new or replacement Affordable Housing in North Somerset.
  - b) remove from the definition of an Exempt Disposal reference to the circumstances where the land disposed of will be developed as affordable housing; and
  
- (4) that authority be delegated to the Leader of the Council, in consultation with the S151 Officer and Director of People and Communities, to agree changes to the definitions of 'Exempt Disposal' and associated clauses in the LSVT Contract.

This decision supports delivery of the corporate priority of ensuring a broad range of new homes to meet our growing need, with an emphasis on quality and affordability. It will also assist in the delivery of the corporate priority of becoming a carbon neutral council and area by 2030.

**Decision:**

To approve the Deed of Variation to the Large-Scale Voluntary Transfer Contract (LSVT) with [NSAH (Alliance Homes) Ltd] as attached at Appendix A, subject that officers may be permitted to make minor amendments as required to correct errors or ensure clarity.

**Reasons:**

Further to the decision of 24<sup>th</sup> September 2019, officers have negotiated the detailed terms of the Deed of Variation to the contract and are recommending approval of the final version, as attached at Appendix A (subject to any final minor amendments to correct errors or ensure clarity).

These changes are in line with the Council decision of 24<sup>th</sup> Sept 2019, other than the addition of a provision allowing receipts retained by Alliance to be spent on energy efficiency improvements to their North Somerset affordable housing stock (as well as on the provision of new or affordable housing in North Somerset).

It is recommended that this addition to the terms of expenditure be approved, for the reason that it is line with the council's corporate priority of becoming a carbon neutral council and area by 2030 and will improve living conditions and reduce energy costs for residents.

The position to be implemented through the Deed of Variation is summarised below:

<b>Category of disposal</b>	<b>Detail</b>	<b>What happens to the receipt?</b>
Disposal	Any disposal that isn't exempt or excluded (i.e. those which do not fit into the other categories below).	No change to current arrangements, e.g. 50% of value paid to NSC after deduction for costs etc.
Exempt disposal	Any disposal where the proceeds of sale will fund either: 1) A site-specific development of new / replacement affordable housing in North Somerset; or 2) Energy efficiency works on Alliance properties in North Somerset.	Alliance retains receipt to reinvest in the specified purposes.  Replacement restrictions will be placed on the Title of new/replacement housing to ensure that any future disposal of that new housing continues to comply with the terms in this table.
Excluded disposal – category 1	Disposal by way of: - Refinancing. - Leasing, where at the date of LSVT was already leased, or where property is a shop. - Disposal to another Registered Provider, where the property will continue to be affordable housing.	Alliance retains receipt and can choose how it spends it; however in most cases there will be no receipt, or only a minimal amount.  Restrictions in relation to other forms of disposal will continue to apply.
Excluded disposal –	Disposals where there is no “valuable consideration” and which are:	No valuable consideration expected, but Alliance would keep any nominal payment.

Category of disposal	Detail	What happens to the receipt?
category 2	<ul style="list-style-type: none"> <li>- To utility providers for the provision of utilities.</li> <li>- To highways authority for highways works.</li> <li>- For nil / nominal value (e.g. for use as open space or other community benefit).</li> <li>- An “agreed disposal” – e.g. written agreement from NS that fits into this category.</li> </ul>	Title restrictions would be removed.
Excluded disposal – category 3	Disposals through: <ul style="list-style-type: none"> <li>- Right to Buy.</li> <li>- Occupier buying 100% of Shared Ownership property.</li> <li>- Disposal effected at direction of Security Trustee or similar due to Alliance suffering financial issues (i.e. bankruptcy or similar).</li> </ul>	No change to previous arrangements: <ul style="list-style-type: none"> <li>• Disposals of Right to Buy and Shared Ownership: money is split on pre- agreed levels between NSC and Alliance.</li> <li>• Disposals by a receiver to facilitate Alliance trading out of financial difficulty: money goes towards meeting the debts - but note that new legislation gives the Secretary of State various powers (e.g. to offer AH units) to another HARP.</li> <li>• Title restrictions removed.</li> </ul>

The Deed of Variation as drafted includes provisions as to how these restrictions and the receipts retained by Alliance are implemented and monitored.

**Options considered:**

To reject the proposed drafting of the Deed of Variation or to negotiate alternative wording: this is not recommended as the drafting is in line with the previous council approval and in addition will support climate change objectives.

**Financial implications:**

Financial implications are as per the Council report of 24<sup>th</sup> Sept 2019.

The majority of disposals undertaken by Alliance are those relating to Right to Buy or Shared Ownership schemes, which are unaffected by the changes enacted through the Deed of Variation.

The properties affected are expected to be those unsuitable for retention as affordable homes; as set out in the Council report, the retention of receipts by Alliance from such properties has previously been agreed through one-off side agreements. The Deed of Variation will reduce the need for such one-off agreements and provide certainty to Alliance to enable a more strategic approach to their business planning and investment.

The addition of a provision allowing expenditure on energy efficiency does not change the financial implications for NSC in allowing the retention of receipts.

**Legal powers and implications:**

As per the Council report of 24<sup>th</sup> Sept 2019.

**Climate change and environmental implications:**

The proposed addition to the terms to enable Alliance Homes to spend funding on energy efficiency is in line with the corporate priority of becoming a carbon neutral area by 2030.

Alliance have committed to ensuring all of their properties in North Somerset achieve a minimum EPC C standard by 2030. This would be two years ahead of nationally required deadlines and will represent a programme of more than £130m investment.

**Consultation:**

As per the Council report of 24<sup>th</sup> Sept 2019.

**Risk Management:**

As per the Council report of 24<sup>th</sup> Sept 2019.

The detailed drafting of the agreement and addition of energy efficiency expenditure is not deemed to create any additional risks.

Provisions in the agreement set out protection for the Council in relation to tracking receipts and their expenditure by Alliance.

**Equality Implications:**

Have you undertaken an Equality Impact Assessment? Yes

Please see the Council report of 24<sup>th</sup> Sept 2019

**Corporate implications:**

As per the Council report of 24<sup>th</sup> Sept 2019. In addition, the allowance for expenditure on energy efficiency will support the corporate priority of becoming a carbon neutral area by 2019.

**Appendices:**


Appendix A: draft Deed of Variation.

**Background papers:**

Report to Council, 24<sup>th</sup> Sept 2019: Affordable Housing Delivery Partnership Agreement with Alliance Homes: <https://n-somerset.moderngov.co.uk/Data/Council/201909241800/Agenda/23%20Affordable%20Housing%20Delivery%20Partnership%20Agreement%20with%20Alliance%20Homes.pdf>

**Signatories:**

**Decision-maker(s):**

Signed:  Executive Member for Assets and Capital Delivery

Date: 2 March 2023

**With advice from:**

Signed:  Assistant Director Placemaking and Growth

Date: 2 March 2023

Signed:  s151 Officer

Date: 2 March 2023

**APPENDIX A**

**DRAFT DEED OF VARIATION**

**Parties**

**North Somerset District Council** of Town Hall, Walliscote Grove Rd, Weston-super-Mare BS23 1UJ (the **Council**); and

**NSAH (Alliance Homes) Limited** of 40 Martingale Way, Portishead, BS20 7AW a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 with registration number 29804R (**Alliance Homes**).

## **Introduction**

The Council entered into a transfer agreement with Alliance Homes (previously known as North Somerset Housing Limited) on 6 February 2006 (as amended by a Deed of Variation dated 8 May 2019 and a second deed of variation dated 25 January 2020) (the **Transfer Agreement**) by which the Council transferred the whole of its housing stock and related assets to Alliance Homes.

Part I of the Seventh Schedule to the Transfer Agreement (the **Transfer**) set out the form of the documentation to be used to effect the transfer of the Property and the Transfer was entered into simultaneously with the Transfer Agreement.

The Council and Alliance Homes have agreed to enter into this further Deed of Variation to vary the provisions of the Transfer.

Save as varied in this Deed, the terms of the Transfer and the Transfer Agreement will remain in full force and effect. The Council and Alliance Homes agree that the existing restrictions registered against the Titles to the Property and imposed by clause 7.3 the Transfer shall from the date of this Deed be interpreted by the Parties in accordance with the Transfer and the Transfer Agreement as varied by this Deed.

This Agreement deed is supplemental to both the Transfer Agreement and the Transfer.

## **Agreed terms**

### **1 Interpretation and Definitions**

1.1 Save as varied in this Deed, the Terms defined in the Transfer and the Transfer Agreement shall have the same meanings in this Deed.

1.2 Save as varied in this Deed, the rules of interpretation set out in the Transfer and the Transfer Agreement apply in this Deed.

### **2 Variations**

From the date of this Deed, the Council and Alliance Homes agree that the Transfer and the Transfer Agreement shall be varied such that Schedule 2 of the Seventh Schedule of the Transfer Agreement shall be deleted and replaced with the form set out in the Schedule to this Deed.

3           **Costs**

On completion of this Deed, Alliance Homes shall pay to the Council its reasonable costs (including legal costs) in connection with the preparation and negotiation of this Deed.

4           **Contracts (Rights of Third Parties) Act 1999**

Nothing in this Deed confers or purports to confer any right on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

5           **General**

This Deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Deed and save as varied by **clauses 2** and 2 above the terms of the Transfer and the Transfer Agreement shall continue in full force and effect.

6           **Jurisdiction**

6.1        The parties agree that this Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation, shall be governed by and construed in accordance with English law.

6.2        Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any claim or matter (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

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## The Schedule

### Schedule 2 (as amended)

#### LSVT Transfer (Seventh Schedule – Form of Transfer) (As amended by First Deed of Variation dated 25 January 2020) Schedule 2

#### 1) DEFINITIONS

In this **Schedule**:

“**Affordable Housing**” means Social Housing as defined in Sections 68-71 of the Housing and Regeneration Act 2008 ;

“**Affordable Housing Provider**” means a provider of social housing registered with the Regulator of Social Housing

“**Allocated Price**” means in respect of any Dwelling forming part of the Property the sum of £4,431;

“**Batch**” means each division of the Property into the geographical areas shown on the Batch Plans;

“**Batch Plans**” means the plans of the Property numbered consecutively from 1 to 220 to accord with the relevant Batch and which are annexed hereto and sealed by the parties hereto by way of identification;

“**Disposal**” means the transfer of or grant or creation of any estate right or interest in or over the Property or any part thereof by the Transferee to any person or body **other than**:

- 1) an **Exempt Disposal**; or
- 2) an **Excluded Disposal**.

“**Energy Efficiency Works**” means a measure for improving efficiency in the use of energy in a dwelling owned by the Transferee in North Somerset;

“**Exempt Disposal**” means any disposal where the land disposed of will be developed as New or Replacement Affordable Housing or the proceeds therefrom will fund either:



1) a site-specific development of New or Replacement Affordable Housing in North Somerset or

2) Energy Efficiency Works

“**Excluded Disposal**” means a:

- **Category 1 Excluded Disposal or**
- **Category 2 Excluded Disposal or**
- **Category 3 Excluded Disposal**

where a:

**Category 1 Excluded Disposal** means any of the following:

- **(Refinancing)** Any disposal by way of mortgage or charge or any other disposal by way of security for any loan;
- **(Leasing)** The grant or renewal of any leasehold interest in respect of any part of the Property which is as at the date of this Transfer subject to a lease or of any shop as at the date of this Transfer forming part of the Property or a lease for 25 years at a rack rental of any part of the Property;
- **(Leasing)** The grant or renewal of any leasehold interest in respect of any part of the Property which is as at the date of this Transfer subject to a lease or of any shop as at the date of this Transfer forming part of the Property;
- **(Disposal to Another Affordable Housing Provider)** Any disposal to the Transferor or to any Affordable Housing Provider where the existing use of the property as Affordable Housing will be retained;

### **Category 2 Excluded Disposal**

Save where valuable consideration is paid, which for the avoidance of doubt shall be a Disposal, (including for the avoidance of doubt land disposed of by way of Compulsory Purchase Order) any of the following disposals

- **(Utilities)** Any disposal to a Service Provider for the purpose of providing any Utility Services;
- **(Highways)** any disposal to a highway authority in respect of highways work;
- **Disposal for nil/nominal value)** Any disposal to the Transferor or other local body where land is to be used as a public open space, woodland play area, tree belt, recreation area or other amenity or landscaped area or facility or for other community benefit where the Transferee **ensures that the use of the said land is restricted to the relevant community use or benefit;** and

- **Agreed Disposal** any disposal from time to time in respect of which the Transferor in its absolute discretion may agree that the provisions of Clause 3.2 shall not apply

**Category 3 Excluded Disposal (Statutory Disposals and their equivalents)**

- A disposal to a person with the benefit of the RTB (whether or not such disposal is in fact effected pursuant to the RTB)
- A disposal to an occupier buying 100% of a shared ownership Dwelling; or
- Any disposal which is effected either at the express direction of any **Security Trustee** and/or any **Beneficiary** and/or any **Finance Party** and/or **Mortgagee** or **Receiver** or the **Homes England or the Regulator of Social Housing** or (in the absence of such direction) with the consent of the **Transferor** (such consent not to be unreasonably withheld or delayed) being in any case a disposal which is for the principal purpose of enabling the Transferee to trade out of any materially adverse financial difficulty;

“**Dwelling**” means any of the residential houses, maisonettes, bungalows and flats forming part of the Property at the date hereof.

“**Gross Consideration**” consideration received by the Transferee for any Disposal (including for the avoidance of doubt an Exempt Disposal and/or Excluded Disposal)

“**Highway Land**” means all roads accessways footpaths and grassed verges adopted and maintainable at the public expense as the same is more particularly delineated and shown coloured brown on the Batch Plans and including (for the avoidance of doubt) any subsoil beneath such roads, accessways, footpaths and grassed verges;

“**Interest**” means at the base lending rate published by the Barclays Bank PLC from time to time or if such rate shall not be published at any time such other comparable rate of interest as the Transferor may then in writing specify having regard to interest rates current at such time

“**Leases**” shall mean the leases brief particulars of which appear in **Schedule 4**.

“**Mortgagee**” means any mortgagee or chargee of the whole or any part of the Property or any successor of any mortgagee or charge or any other person holding security or on whose behalf security is held over the Property or any part;

“**New or Replacement Affordable Housing**” means the provision within North Somerset only of Affordable Housing or such other affordable housing tenures as may be previously agreed in writing by the Council from time to time;

“**North Somerset**” shall mean the administrative area or North Somerset District Council as at the date of this Transfer

“**Net Receipt**” means the Gross Consideration for any Disposal (including for the avoidance of doubt an Exempt Disposal and/or Excluded Disposal and in this definition “disposal shall mean all or any of them) after the deduction of the direct costs of sale of the relevant property incurred by the Transferee

“**Perpetuity Period**” means a period of 80 years from the date hereof

“**Property**” means the land and buildings transferred by this transfer all of which property is more particularly delineated on the Batch Plans and shown edged red and together or as to any part which is not transferred with full title guarantee coloured magenta AND also with the properties shown under the heading of “DIYSO Properties” in **Schedule 1** Part II as registered under their said title numbers but excluding the Retained Land and the Highway Land and the land hatched black (being land that has previously been sold by the Transfer or its predecessors in title)

“**Receiver**” means any receiver (including an administrative receiver) appointed by a Mortgagee or any person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed) including a housing administrator

“**Registers**” means the registers of title at the Land Registry of the title numbers set out in **Schedule 1**

“**Repayment Sum**” means the Gross Consideration for any Disposal (including for the avoidance of doubt an Exempt Disposal and/or Excluded Disposal and in this definition “disposal shall mean all or any of them) after the deduction of the aggregate of the following:

- (i) all costs and expenditure reasonably and properly incurred by the Transferee to facilitate the **disposal** and in seeking to enhance the value of the part of the Property comprised in the **disposal** including (but not by way of limitation) remediation costs, demolition costs, decanting costs including homeloss and disturbance payments to occupiers of **Dwellings** (or the sites of Dwellings) comprised in the **disposal**, marketing costs, estate agents fees and any fees and expenses incurred in obtaining planning permission
- (ii) any statutory taxes or levies payable directly or indirectly by the Transferee on any increase in value of the part of the Property comprised in the Disposal;

- (iii) If the disposal includes a Dwelling the Allocated Price (indexed for increases in the CPI between the date of this Transfer and the date such Disposal is completed) of each Dwelling comprised in such Disposal together with the amount expended by the Transferee on the Dwellings in respect of repairs and improvements carried out pursuant to the commitments given in the consultation document

**“Restrictions and Stipulations”** means the covenants restrictions and stipulations and other provisions in so far as the same affect any part of the Property and are subsisting and capable of being enforced contained or referred to in the title deeds and documents relating to the Property or in the deeds and documents affecting disposals of land formerly belonging with parts of the Property brief particulars of which are set out in the Registers (except for the avoidance of doubt any charges to secure financial obligations),

**“Retained Land”** means the land retained by the Transferor and shown coloured green on the Batch Plans and the unadopted roads accessways and footpaths shown coloured yellow on the Plans and including (for the avoidance of doubt) the subsoil beneath such unadopted roads accessways and footpaths.

**“CPI”** means the UK Consumer Price Index or in the event that the basis of calculation of such index shall change (as to which the Transferor’s determination shall be conclusive) or if such index ceases to be published such other published index of retail prices or the value of money as the Transferee shall propose with the consent of the Transferor (not to be unreasonably withheld or delayed) PROVIDED THAT in the event that the agreement cannot be reached within 28 days of such proposal by the Transferee the CPI may be determined by a single arbitrator nominated on the application of either party by the President for the time being of the Law Society;

**“RTB”** means the preserved right to buy as set out in Section 171A to 171H of the Housing Act 1985 the right to acquire scheme as set out in S 16 of the Housing Act 1996 or any right pursuant to the Leasehold Reform Act 1967 or the Leasehold Reform Housing and Urban Development Act 1993 or any other similar right to buy conferred by statute including any voluntary scheme which may be operated by the Transferee which is similar to the Right to Buy;

**“Secretary of State”** means the Deputy Prime Minister acting as the First Secretary of State or whoever succeeds to such a position;

**“Service Conduits”** means any mains sewers septic tanks drains pipes wires cables conduits gutters channels soakaways ditches water courses and all other conducting media

and apparatus of any kind whatsoever (whether or not existing at the date hereof) other than those which are or shall be come vested in a Service Provider within the Perpetuity Period.

“**Service Provider**” means any company or authority constituted for the provision of the Utility Services,

“**Tenancies**” shall mean the periodic tenancies of the **Dwellings of the Property**

“**Title Restriction**” means the title restriction on the Property described at **Clauses 7.2 – 7.3 of this Schedule 2**

“**Transferee**” means the transferee named in Panel 5 of this transfer and includes where the context **so admits the Transferee’s successors in title.**

“**Transferor**” means the transferor named in Panel 4 of this transfer and includes where the context **so admits the Transferor’s successors in title to any Retained Land**

“**Utility Services**” means the provision of gas, electricity or water supplies or drainage sewerage or telecommunications services or other supplies or services of a similar nature to any of the foregoing.

Any reference to a clause or schedule shall (unless the context otherwise requires) be a reference to a clause or **schedule of this Transfer.**

## 2) **RIGHTS BENEFITS, EXCEPTIONS AND SUBJECTIONS**

The Property or any part of it is transferred **TOGETHER WITH** the rights (newly granted by this transfer) set out in Part 1 of **Schedule 3** for the benefit of the Transferee and its successors in title owners and occupiers for the time being of the Property or any part thereof such rights being for the benefit only of those parts of the Property which are included in Batch Plans where there is Retained Land **AND TOGETHER WITH** the benefit (so far as the same relates to any part of the Property) of:

- i) all subsisting rights and easements expressly or impliedly granted or reserved and
  - ii) all subsisting rights and easements which have been acquired by prescription
- at any time before the date of this transfer for the benefit of any land which is or includes part of the Property **AND TOGETHER ALSO WITH** the benefit (so far as the same relates to any part of the Property) of any covenants restrictions or stipulations or other matters on the part of purchasers of land formerly belonging to the Transferor and which is adjoining or neighbouring any part of the Property (being covenants restrictions or

stipulations which are capable of benefiting some part of the Property and in particular (but without limitation) all covenants to bear a proportion of the cost of repairing maintaining cleansing or operating any roads parking area paths forecourts accessways or Service Conduits forming part of the Property used by the owners of such adjoining or neighbouring land and the owners or occupiers of the Property but excluding any covenants under Section 155 of the Housing Act 1985 to repay a discount to the Transferor **EXCEPTING AND RESERVING** to the Transferor the benefit only of those parts of the Retained Land which are situated adjacent to or in the vicinity of the Property or any part thereof the rights set out in **Part II of Schedule 3 SUBJECT TO** and with the benefit of the **Restrictions and Stipulations SUBJECT ALSO TO** and with the benefit of all of the following to the extent that they affect or benefit any part of the Property:

- i) the Leases and Tenancies;
- ii) the rights and interest of the highway authority over and in respect of all highways forming part of the Property which are adopted.

### 3) **COVENANTS BY THE TRANSFEREE**

- 3.1 The Transferee for itself and its successors in title **HEREBY COVENANTS** with the Transferor and its successors in title with the object and intent of affording the Transferor a full and sufficient indemnity but not further or otherwise from the date hereof to observe and perform the **Restrictions and Stipulations** and any covenants on the part of the Landlord contained in the **Leases** and in relation to any land previously sold within the definition of **Restrictions and Stipulations** herein and to keep the Transferor fully and effectually indemnified against all future actions proceedings costs charges claims demands and liabilities whatsoever in respect of any breaches non-performance or non-observance thereof occurring on or in relation to any part of the Property from the date hereof.
- 3.2 The Transferee shall not within a period of thirty [30] years from the date of this Transfer effect any **Disposal** of the **Property** or any part hereof which is not an **Exempt Disposal** or an **Excluded Disposal** without:
  - (3.2.1) giving the Transferor 14 days' notice in writing of its intention to make such a Disposal; and
  - (3.2.2) within 28 days of receipt by the Transferee from the party to whom the **Disposal** is made of the relevant consideration accounting for and remitting to the Transferor a sum being 50% of the **Repayment Sum** PROVIDED ALWAYS and it is hereby agreed that:

- 3.2.1.1 the obligations of the Transferee under this **Clause 3.2** shall not be binding on any Mortgagee or Receiver or any persons deriving title through such Mortgagee or Receiver and the Transferor hereby waives any entitlement to any payment under the provisions of this transfer in respect of Disposals occurring after action has been taken by any Mortgagee or Receiver in order to enforce security over the Property or any part thereof or to recover any funds advanced on the security of the Property or any part thereof
- 3.2.1.2 The payment of the sum referred to in **Clause 3.2** shall effect a release of that part of the Property being the subject of the Disposal from the provisions of **Clause 3.2 (“the Released Property”)** and for the avoidance of doubt the Transferor shall not be entitled to receive payment of more than one such sum in relation to the Released Property.
- 3.2.1.3 Upon payment of the sum referred to in **Clause 3.2** the Transferor shall upon request by the Transferee certify the release of the Released Property in such terms as the Transferee shall reasonably require in accordance with the requirements of the Land Registry.
- 3.2.1.4 The provisions of **Clause 3.2** and the obligations of the Transferee thereunder shall upon completion of an **Exempt Disposal** cease to apply to any part of the Property being the subject of an **Exempt Disposal** and any entry relating to the provisions of **Clause 3.2** on the titles to such part of the Property shall be removed.
- 3.2.1.5 The certificate of the Transferee’s solicitor (or where relevant a **Mortgagee’s** or **Receiver’s** solicitor) shall be conclusive as to the operation of the provisions of this **Clause 3.2.1 and Clauses A 3.2 and B 3.2.**

## **Exempt Disposals**

### **A 3.2 - Exempt Disposals**

A.3.2.1. The Transferee shall not at any time before 5 February 2036 effect any **Exempt Disposal** of the **Property** or any part hereof without:

A 3.2.1.1 Within 28 days following receipt by the Transferee from the party to whom the **Exempt Disposal** is made of the relevant consideration notifying the Transferor of the amount of the relevant consideration and of the relevant Net Receipt (“Relevant Net Receipt”); and

A3.2.1.2 Complying with the **Transferee’s Covenant** at **Clause 9 of this Schedule.**

A 3.2.2 Subject to the Transferee complying with the provisions of **Clause 9 and Clause A 3.2.1** the obligations of the Transferee shall upon completion of an **Exempt Disposal** cease to apply to any part of the Property being the subject of an **Exempt Disposal** and any entry relating to the provisions of **Clause 3.2** on the titles to such part of the Property shall be removed.

## **Excluded Disposal**

### **B 3.2 - Excluded Disposal**

The Transferee shall not at any time before 5 February 2036 effect any **Excluded Disposal** of the **Property** or any part thereof without:

B3.2.1 in the case of a **Category 1 Excluded Disposal** ensuring that on any Disposal to another Affordable Housing Provider the relevant transferee takes subject to the Title Restriction at **Clause 7.3** which therefore shall not be removed.

B 3.2.2 in the case of a **Category 2 Excluded Disposal**

B 3.2.2.1 giving the Transferor 14 days' notice in writing of its intention to make such an **Excluded Disposal**; and

B.3.2.2.2 upon completion of a **Category 2 Excluded Disposal** the provisions of **Clause 3.2** shall cease to apply to any part of the Property being the subject of that **Category 2 Excluded Disposal and** any entry relating to the provisions of **Clause 3.2** on the titles to such part of the Property shall be removed at completion of the relevant Excluded Disposal.

B 3.2.3 in the case of a **Category 3 Excluded Disposal** the provisions of **Clause 3.2** shall cease to apply to any part of the Property being the subject of that **Category 3 Excluded Disposal and** any entry relating to the provisions of **Clause 3.2** on the titles to such part of the Property shall be removed at completion of the relevant Excluded Disposal and (save in relation to a disposal by a mortgagee in possession) the Transferee shall pay to the Transferor within 1 year of the date of the Excluded Disposal the sums due under the 16<sup>th</sup> Schedule.

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**3.2.2**      **The Transferor** waives the right to any unpaid lien over the Property in respect of the obligation on the part of the Transferee to pay to it the sum in accordance with **Clause 3.2**

**3.3** Upon the sale of any part of the Property to a tenant of that part of the Property pursuant to the RTB the Transferee covenants to obtain from that tenant (and to the intent and so as to bind thereby that part of the Property into whosoever's hands the same may come) a covenant to observe and perform the covenants restrictions and stipulations set out in **Schedule 5 PROVIDED ALWAYS THAT AND IT IS HEREBY AGREED AND DECLARED** that the Transferee and all other persons deriving title under it including (inter alia) any **Mortgagee**, or **Receiver** of the **Transferee** or persons deriving title through any of them (other than any tenant acquiring part of the Property pursuant to a RTB) shall not be bound by any of the covenants restrictions or stipulations set out in **Schedule 5** nor shall any **Mortgagee**, or **Receiver** of the Transferee or persons deriving title through such **Mortgagee**, or **Receiver** be bound by the covenant on the part of the **Transferee** in this **Clause 3.3**.

#### **4.            DISPOSALS BY THE TRANSFEEE**

[Not Used]

#### **5.            ASSIGNMENT OF RIGHTS**

**5.1**      **The Transferor HEREBY ASSIGNS** to the Transferee (in so far as the Transferor has power to do so but otherwise with full title guarantee) the benefit of all the covenants and other matters contained in any assurances of land formerly in the ownership of the Transferor adjoining or neighbouring the Property and which relate to the Property and in particular (but without limitation) all covenants to bear a proportion of the cost of repairing maintaining cleansing or operating any roads parking areas paths forecourts accessways or Service Conduits forming part of the Property used by the owners of such adjoining or neighbouring land and the owners or occupiers of the Property PROVIDED THAT this assignment shall not include the benefit of any covenants as to the repayment of all or part of any sum by which a purchase price was discounted imposed before the date hereof on the sale of any property formerly owned by the Transferor.

**5.2**      **The Transferor HEREBY ASSIGNS** to the Transferee ((in so far as the Transferor has power to do so but otherwise with full title guarantee)):

**5.2.1**    the benefit of rights reservations or such other matters expressed to be for the benefit of the Transferor or its predecessors or successors in title to the extent

that the benefit of such rights reservations or other matters relates to the Property and is not otherwise transferred to the Transferee by operation of law.

**5.2.2** such rights (if any) reserved for the benefit of the Property or any part thereof by any assurances of land previously sold by the Transferor or its predecessors in title.

## **6. AGREEMENT AND DECLARATION**

It is **HEREBY AGREED AND DECLARED** that

- 6.1** any internal wall separating a building on part of the Property from a building on Retained Land is and shall forever hereafter remain and be a joint and party wall severed vertically in accordance with Section 38(1) of the Law of Property Act 1925 and shall be useable and maintainable in equal shares by the owners and occupiers for the time being of the buildings separated thereby.
- 6.2** nothing expressed or implied in this transfer shall in any way restrict or fetter the exercise by the Transferor in relation to any part of the Property of the Transferor's powers as a local authority.
- 6.3** the covenants on the part of the Transferee contained in clauses **3.2 and 3.3** are given pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982.

## **7. H M LAND REGISTRY**

**7.1** [not used]

**7.2** This Transfer is made under the provision of the Housing Act 1985 and section 171A thereof as applied by the Housing (Preservation of Right to Buy) Regulations 1993 and applies to all Dwellings included in the Property which are occupied by secure tenants at the date hereof and who are eligible to purchase their homes under the said 1985 Act being the properties listed in the Annex hereto except those marked with Y on the Certificate. The Transferee hereby applies to the Chief Land Registrar for the entry of the notice and restriction (Form W in Schedule 4 of the Land Registration Rules 2003) required by Section 171D(2) and paragraph 4 of Schedule 9A of the Housing Act 1985 and for entry of notice protecting the right of qualifying persons.

**7.3** The Parties hereby apply to the Chief Land Registrar for the entry of a restriction on the Titles to the Property in the following form:-

**“No disposition by the registered proprietor shall be registered without a certificate being given by the solicitor to the registered proprietor that the provisions of clause 3.2 of the Transfer dated 6 February 2006 made**

**between North Somerset District Council (1) and North Somerset Housing Limited (2) have been complied with or the Registrar otherwise orders.”**

## **8. TRANSFEROR’S COVENANTS**

The Transferor for itself and its successors in title HEREBY COVENANTS with the Transferee and its successors in title to keep the Transferee and its successors in title fully and effectually indemnified against all future actions proceedings costs charges claims demands and liabilities whatsoever in respect of any breach prior to the date hereof and any covenants and obligations (including the obligation to pay) contained in each and every rent charge brief particulars of which are referred to the charges registers of each of the **Registers.**

## **9. TRANSFEE’S COVENANTS**

9.1 The Transferee HEREBY COVENANTS with the Transferor and its successors in function to:

9.1.1. maintain accurate accounts of the said Relevant Net Receipt and not less than once per annum to produce on an open book basis these to the Transferor together with any such other documentation as the Transferor shall reasonably request; and

9.1.2 to expend the whole of the said Relevant Net Receipt within 7 years of the date of the relevant Exempt Disposal (“the Repayment Date”) solely on either:

9.1.2.1. New or Replacement Affordable Housing in North Somerset or f

9.1.2.2. Energy Efficiency Work

and for no other purpose whatsoever; and

9.1.3 the Transferor shall apply to the Land Registry for the Restriction at **clause 7.3** of this Schedule to be applied to the relevant New or Replacement Affordable Housing so acquired;

9.1.5 In the event that the said Relevant Net Receipt is not so expended the Transferee shall on or before the Repayment Date repay to the Transferor a sum being 50% of the said **Relevant Net Receipt** together with Interest thereon for the period from and including the date of the relevant Exempt Disposal to and including the date of actual payment; and for the avoidance of doubt this shall apply notwithstanding if the Repayment Date occurs on or after 5 February 2036.

End of Schedule

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**This Deed** has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Executed as a DEED**

By affixing **THE COMMON SEAL** of  
**North Somerset District Council** )  
in the presence of: )  
)

Assistant Director Governance/  
Solicitor of the Council

Name.....

**Executed as a Deed**

By affixing **THE COMMON SEAL** of  
**NSAH (Alliance Homes) Limited** )  
)

in the presence of: )

Board Member

Secretary

